IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 8704 of 2004

Between:
D. Yadaiah S/o D. Eddaiah
R/o 9-5-115/9, Ramdevguda, Golconda (M) Hyderabad District
..... PETITIONER

AND

1 The District Collector, Hyderabad
2 The Mandal Revenue Officer, Golconda (M) Vijayanagar Colony, Hyderabad
3 The Commissioner, Municipal Corporation of Hyderabad
4 The Assistant Town Planning Officer, Ward No.9 Circle No.4 MCH, Ramdevguda, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, Direction or Writ More particularly one in the nature Writ of Mandamus, declaring the action of the Respondents 3 and 4 in demolishing and/ or removing the structures bearing M.C.H. Door No.9-5-115/5/A, situated at Ramdeveguda, Golconda Mandal, Hyderabad, before considering the application dated 12-09-2003, filed with the Respondents 1 and 2 seeking regularization of the occupation in respect of the said land as illegal, arbitrary, Unauthorized, unjust, unreasonable and violative of Fundamental rights guaranteed under Article 14, 19 and 21 of the Constitution of India and consequently directing the Respondents 1 and 2 to consider the application in accordance with the Government orders in Vogue.

Counsel for the Petitioner:MR.G.ANANDAM

Counsel for Respondents 1 and 2: GP FOR REVENUE

Counsel for Respondents 3 and 4 : MR.GANTA RAMA RAO

The Court made the following order at the stage of admission:

ORDER:

The petitioner earlier filed W.P.No.27145 of 2003 seeking a writ of mandamus directing the respondents not to demolish the structure in premises bearing No.9-5-115/5/A, on an area of 10 feet X 11 feet, situated at Ramdevguda Slum (Golconda Mandal), Hyderabad, without following the procedure, as laid down by law. The said writ petition was disposed of by this Court, directing the 1st respondent-Municipal Corporation therein to follow the due procedure of law before removing the encroachment, if any, if it causes obstruction for free flow of traffic.

Pursuant to the orders of this Court, the 3rd respondent-Commissioner, Municipal Corporation of Hyderabad, issued a notice under Section 402 of the Hyderabad Municipal Corporations Act, 1955 (for short "the Act"), dated 31-01-2004, to the petitioner, calling upon him to remove/pull down the unlawful construction, as the said construction is on the road margin obstructing the free flow of traffic. In reply to the said notice, the petitioner submitted his explanation, dated 03-02-2004, stating that the application filed by him, dated 12-09-2003, before the 1st respondent-District Collector, Hyderabad, for regularization of his occupation over the Government land, is pending. However, the 1st respondent has not taken any action on the said application so far.

In view of the same, the petitioner filed the present writ petition contending that the application, dated 12-09-2003, filed by him before the 1st respondent seeking regularization of the occupation in respect of the said land, is pending, and even before the disposal of the said application, the 3rd respondent has issued the impugned notice,

which is arbitrary and illegal and violative of Article 14 of the Constitution of India.

In view of the fact that this Court earlier directed the respondent-Municipal Corporation to follow the due procedure before removing the encroachment, if any, the impugned notice was issued under Section 402 of the Act. Nobody will have any vested right to encroach upon the road margin, which will obstruct the free flow of traffic and the Corporation is under obligation to see that such road margins are not encroached by any third parties.

In view of the same, I see no ground to entertain the writ petition and the same shall accordingly stand dismissed. No order as to costs.

21-09-2004

gj

To

1 The District Collector, Hyderabad
2 The Mandal Revenue Officer, Golconda (M) Vijayanagar Colony, Hyderabad
3 The Commissioner, Municipal Corporation of Hyderabad
4 The Assistant Town Planning Officer, Ward No.9 Circle No.4 MCH, Ramdevguda, Hyderabad
5 Two C.Cs. to the Government Pleader for Revenue, High Court of Andhra Pradesh, Hyderabad (OUT)
6 Two C.D. copies.